

In the Drawings

The attached three sheets of drawings include changes to Figs. 1, 2A, and 2B. These sheets replace the original sheets including those figures. Labels have been added in accordance with the specification. No new matter has been added.

REMARKS/ARGUMENTS

I. General Remarks

Applicants respectfully request reconsideration of the application in view of the amendments and remarks contained herein.

II. Remarks Regarding Drawing Objections

Substitute drawings have been provided.

III. Remarks Regarding Specification Objections

The office action contained an objection to the specification based on an overly generic description of the drawings. Applicants respectfully disagree. Especially in view of the substitute drawings, the description of the drawings, together with the new drawing labels, are sufficiently specific. Each figure is described both in terms of the type of depiction, *e.g.*, block diagram, communications flow diagram, etc., and the aspect of the invention embodiment, *e.g.* system or method, depicted.

IV. Disposition of the Claims

At the time of this Office Action, claims 1-68 are pending and have been rejected. Claims 6, 13, 17, 36, 40, 48 & 62 are objected to because of informalities. Claims 1, 6, 7, 13, 14, 17, 25, 30, 31, 36, 37, 40, 47, 52, 53, 58 & 59 have been amended.

V. Remarks Regarding Claim Objections

The claim objections focus on the use of identifiers in the claims such as “first” and “second”. The claims have been amended to remove the informalities identified by the examiner.

VI. Remarks Regarding Claim Rejections Under 35 U.S.C. § 103

Claims 1, 4, 6-9, 11-16, 20, 21, 23, 25, 28, 30-33, 35-39, 43, 44, 46, 47, 50, 52-55, 57-61, 65, 66 and 68 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schuster et al. (US Patent No. 6,360,271) ("Schuster"), in view of Mills (Internet Time Synchronization: The Network Time Protocol) ("Mills").

Schuster discloses a method for jitter buffering a packet-based communication system. In the abstract, Schuster indicates that synchronizing the timing of the transmitting and receiving ends can be accomplished using global positioning system receivers. Figure 2 of the patent confirms this synchronization scheme. Schuster's teaches a method that employs already-existing synchronized timing, it does not teach how to synchronize timing. Schuster goes so far as to say with respect of the time synchronization, "the particulars of which are not necessarily important." Col. 9, lines 44-45.

It would incompatible with Schuster to modify the timing of the clocks, because those clocks are synchronized already. Schuster's functionality in modifying the buffering of the receiving node is dependent on the clocks staying in the same relative synchronization. Modifying one of the clocks, as suggested by the office action in its combination for each independent claim, would make Schuster's changes in jitter buffer size unreliable. Schuster would then be unable to achieve the stated purpose of reducing packet loss and unnecessary delay. Col. 4, lines 65-67. Prior art cannot be combined in a manner that defeats its purpose. *See In re Hedges*, 783 F.2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1986). For this reason, the asserted combination of Schuster with Mills does not render the claimed subject matter obvious.

In addition, the teaches of Schuster are inconsistent with the description of the office action. The office action references col. 9 lines 40-44 as the step of “sending the first message”. That portion of the specification describes a first time signal. The office action then references lines 2-4 of the abstract as “recording the first time when the first processor receives the first message.” That portion of the abstract, however, merely states that time signals maintained are synchronized. Nothing in Schuster indicates that the time when the time signal is received is recorded. Schuster reads the time indicated by the signal content, rather than recording the time at which the signal is received. With respect to each independent claim, the office action incorrectly describes Schuster as recording the time when the time signal is received. As the office action admits, Mills also does not disclose or suggest recording the times at which first and second signals are received. There is no prima facie case of obviousness where the asserted combination lacks at least one element. M.P.E.P. § 2143; *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1443 (Fed. Cir. 1991).

Independently, for each of these two reasons, claims 1, 4, 6-9, 11-16, 20, 21, 23, 25, 28, 30-33, 35-39, 43, 44, 46, 47, 50, 52-55, 57-61, 65, 66 and 68 would not have been obviousness and applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Claims 2, 3, 18, 19, 26, 27, 41, 42, 48, 49, 63 and 64 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schuster in view of Mills and further in view of Topfl et al. (US 2004/0128350 A1) (“Topfl”).

The office action bases these rejections on the same combination of Schuster and Mills that defeats the purpose of Schuster and incorrectly describes its teachings. For the two independent reasons discussed above that combination is inappropriate and does not establish

that the claimed subject matter would have been obvious. Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Claims 5, 17, 29, 40, 51 and 62 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schuster in view of Mills and further in view of Krause (US 7,171,484 B1) (“Krause”).

The office action bases these rejections on the same combination of Schuster and Mills that defeats the purpose of Schuster and incorrectly describes its teachings. For the two independent reasons discussed above that combination is inappropriate and does not establish that the claimed subject matter would have been obvious. Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Claims 10, 22, 34, 45, 56, and 67 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schuster in view of Mills and further in view of Shah et al. (US 6,400,646 B1) (“Shah”).

The office action bases these rejections on the same combination of Schuster and Mills that defeats the purpose of Schuster and incorrectly describes its teachings. For the two independent reasons discussed above that combination is inappropriate and does not establish that the claimed subject matter would have been obvious. Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Claim 24 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Schuster in view of Mills and further in view of Cognet et al. (US 7,080,160 B2) (“Cognet”).

The office action bases these rejections on the same combination of Schuster and Mills used for claim 13 that defeats the purpose of Schuster and incorrectly describes its teachings. For the two independent reasons discussed above that combination is inappropriate

and does not establish that the claimed subject matter would have been obvious. Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

SUMMARY

In light of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

Applicants believe that there are no fees due in association with the filing of this Response. However, should the Commissioner deem that any fees are due, including any fees for extensions of time, Applicants respectfully request that the Commissioner accept this as a Petition Therefore, and direct that any additional fees be charged to Baker Botts L.L.P. Deposit Account No. 02-0383, Order Number 063718.0330.

Respectfully submitted,

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